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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Jesus Gabriel Rodriguez-Valenzuela,

10 Petitioner,

11 v.

12 Ryan Thornell, et al.,

13 Respondents.
14

No. CV-23-00055-TUC-RCC

ORDER

15 On June 28, 2024, Magistrate Judge Eric J. Markovich issued a Report and
16 Recommendation (“R&R”) in which he recommended the Court dismiss Petitioner Jesus
17 Gabriel Rodriguez-Valenzuela’s Petition Under 28 U.S.C. § 2254 for a Writ of Habeas
18 Corpus by a Person in State Custody (Non-Death Penalty) (Doc. 1.) Petitioner filed an
19 objection to the R&R (Doc. 17), and Respondents a response (Doc. 22). Upon review, the
20 Court will adopt the R&R and dismiss Petitioner's § 2254 Habeas Petition.

21 ***I. Standard of Review***

22 The standard of review of a magistrate judge’s R&R is dependent upon whether a
23 party objects: where there is no objection to a magistrate’s factual or legal
24 determinations, the district court need not review the decision “under a *de novo* or any
25 other standard.” *Thomas v. Arn*, 474 U.S. 140, 150 (1985). However, when a party
26 objects, the district court must “determine *de novo* any part of the magistrate judge’s
27 disposition that has been properly objected to. The district judge may accept, reject, or
28 modify the recommended disposition; receive further evidence; or return the matter to the

1 magistrate judge with instructions.” Fed. R. Civ. P. 72(b)(3); *see also* 28 U.S.C. §
2 636(b)(1). Moreover, “while the statute does not require the judge to review an issue *de*
3 *novo* if no objections are filed, it does not preclude further review by the district judge,
4 *sua sponte* or at the request of a party, under a *de novo* or any other standard.” *Thomas*,
5 474 U.S. at 154.

6 ***II. Rodriguez-Valenzuela’s Objections***

7 Petitioner objects to the Magistrate Judge's findings regarding Ground Two of his
8 Petition, which alleges ineffective assistance of counsel during the plea process. (Doc.
9 17.) Petitioner argues that his counsel failed to ensure he understood the ramifications
10 and benefits of the plea offers, and that this failure constituted ineffective assistance.
11 Petitioner did not object to the Magistrate Judge's recommendations regarding Grounds
12 One, Three, and Four, which were found to be non-cognizable and procedurally
13 defaulted.

14 ***III. Analysis***

15 Petitioner's objections focus on the alleged deficiency of his counsel's performance
16 during plea negotiations, stating that had counsel been effective, he would have taken one
17 of two offered plea agreements. The Magistrate Judge applied the two-prong test from
18 *Strickland v. Washington*, 466 U.S. 668, 687 (1984), requiring a showing of both
19 deficient performance and resulting prejudice. The Magistrate Judge found that Petitioner
20 failed to demonstrate prejudice, as the sentencing court stated that Petitioner would not
21 have received a less severe sentence had he accepted either plea offer.

22 Petitioner now argues that his counsel's performance was deficient, but this
23 argument is irrelevant to the R&R's finding of no prejudice. Petitioner’s sentencing
24 judge, Deborah Bernini, stated, “[a]s the sentencing judge, the Court can state that
25 [Rodriguez-Valenzuela] would not have received a less severe sentence had he accepted
26 either plea.” (Doc. 12-2 at 33.) The Magistrate Judge correctly noted that without a
27 showing of prejudice, the claim of ineffective assistance fails under *Strickland*.
28 Furthermore, Petitioner's assertion that the R&R erred by relying on the alleged
insufficiency of his affidavit is misplaced, as the R&R's determination was based on the

1 lack of prejudice, not the affidavit's detail.

2 Petitioner also argues that he was prejudiced by the additional charges related to a
3 fourth drug transaction. However, this argument was not clearly raised in his original
4 Petition and is not exhausted in state court proceedings. The R&R appropriately declined
5 to consider this new argument.

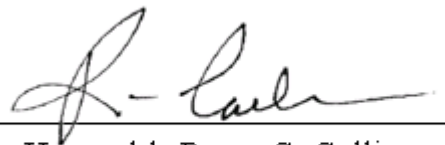
6 Finally, Petitioner objects to the denial of an evidentiary hearing. The R&R found
7 that Petitioner did not meet the requirements of 28 U.S.C. § 2254(e)(2) for an evidentiary
8 hearing, as he failed to show that such a hearing would change the outcome given the
9 lack of demonstrated prejudice. This conclusion was not in error.

10 In conclusion, the Court agrees with the Magistrate Judge's analysis and
11 conclusions as to Grounds One, Three, and Four—these grounds are non-cognizable and
12 procedurally defaulted. Petitioner's objections to Ground Two do not warrant a different
13 outcome, as he has not demonstrated the requisite prejudice under *Strickland*.

14 Accordingly, IT IS ORDERED:

- 15 1) Magistrate Judge Eric J. Markovich's Report and Recommendation is
16 ADOPTED. (Doc. 16.)
- 17 2) Jesus Gabriel Rodriguez-Valenzuela's Petition for Writ of Habeas Corpus is
18 DENIED WITH PREJUDICE. (Doc. 1.)
- 19 3) The Court finds that jurists of reason would not debate whether the district
20 court was correct in its procedural rulings. *See Slack v. McDaniel*, 529 U.S.
21 473, 484 (2000). Therefore, the Court will not issue a COA.
- 22 4) The Clerk of Court shall docket accordingly and close the case file in this
23 matter.

24 Dated this 7th day of February, 2025.

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27 Honorable Raner C. Collins
28 Senior United States District Judge